

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CRESCENT/MACH I PARTNERS	§	
L.P., JEFFERIES & CO., INC., TCW	§	No. 629, 2009
SHARED OPPORTUNITY FUND II	§	
LP, SHARED OPPORTUNITY	§	Court Below—Superior Court
FUND IIB LLC, TCW/CRESCENT	§	of the State of Delaware in and
MEZZANINE INVESTMENTS	§	for New Castle County
PARTNERS, L.P., TCW/CRESCENT	§	
MEZZANINE PARTNERS, L.P.,	§	
TCW/CRESCENT MEZZANINE	§	
TRUST, TCW LEVERAGED	§	
INCOME TRUST, L.P., TCW	§	
LEVERAGED INCOME TRUST II,	§	
L.P., BROWN UNIVERSITY and	§	
RICHARD HANDLER,	§	
	§	
Defendants Below,	§	
Appellants,	§	
	§	
v.	§	
	§	
THE AMERICAN BOTTLING	§	
COMPANY,	§	
	§	
Plaintiff Below,	§	C.A. No. 09C-02-134
Appellee.	§	

Submitted: October 30, 2009
Decided: November 9, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 9th day of November 2009, upon consideration of the appellants' amended notice and amended supplemental notice of appeal from an interlocutory order, it appears to the Court that:

(1) The appellants have petitioned this Court, pursuant to Supreme Court Rule 42, to appeal from the Superior Court's opinion dated September 30, 2009, that denied the appellants' motion to dismiss.¹ On October 29, 2009, the Superior Court denied the appellants' application for certification of an interlocutory appeal.

(2) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances.² In the exercise of its discretion, the Court has concluded that exceptional circumstances as would merit interlocutory review of the Superior Court's September 30, 2009 opinion do not exist in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ The Superior Court denied the motion to dismiss as to claims of mutual mistake and unilateral mistake and granted the motion as to an unjust enrichment claim. *American Bottling Co. v. Crescent/Mach I Partners, L.P.*, 2009 WL 3290729 (Del. Ch.).

² Del. Supr. Ct. R. 42(b), (d)(v).